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CURRENT TOPICS.

It is with painful regret that we acknowledge that the judges of the New York Court of Appeals have placed themselves in robes. They will be held responsible for this arrogant assumption of superiority and contempt for the people, and the day may come when they will repent that they have heeded the counsel of those men who have but used this movement to demonstrate their influence. Our Albany cotemporary remarks: "We expect that the next breeze that blows from the west will bring to our ears the clash of resounding quills of legal editors who see in this change of garb a shaking of the pillars of the State." We have said all we propose to say upon this matter of gowns. We will utilize our "quills" for other purposes, and our cotemporary will therefore be sorely disappointed in its prediction. We will only say that our western judges will exhibit more sense than those of New York have done when the question of "gowns" is broached to them.

It has always been a mooted question whether a condition can be held void, if it is possible that the breach thereof may not occur within the period prescribed by the rule against perpetuities. The policy of the law being to prevent any restraint upon the free enjoyment and alienation of property it has never required a very strong argument to induce the courts to circumvent the intentions of atestator or donor by an exhibition of that much-abused creature, named by the courts, public policy. The question has lately come before the Chancery Division of the English High Court in Dunn v. Flood, 49 L. T. N. S. 670, and the public welfare is declared by Judge North to be impeded by the recognition of such conditions. The condition provided that, if the grantee or his assigns should ever carry on upon the premises, any of certain designated trades, the grantors or their heirs might reenter upon the premises and continue to occupy and possess the same until the lapse of three months after the discontinuance of such forbidden trade. There was no limit of time fixed during which it was to apply, argued the learned judge; no limit to prevent its being a claim in perpetuity; and the judge treated the question as one admitting of no doubt. We disagree with Judge North in his last conclusion; and he will find that there will be a great contest, with very uncertain results, before a question upon which such important interests depend, will be authoritatively decided by courts of ultimate resort.

The anxiously looked for decision in Farrar v. St. Louis, upon the constitutionality and validity of the ordinance of the city council, ordering an assessment by the "front foot rule" upon all the property adjoining a street ordered to be improved, was a few days ago rendered by the Supreme Court of Missouri. The validity of the ordinance was disputed on the grounds that the city at large was interested in the improvement of the street; that the ordinance made no provision for the ascertainment of the benefits to the general public therefrom, but assessed the whole cost thereof upon the abuttors; that the expense should have been paid out of the general revenue of the city; that it did not provide for the imposition of a portion of the expense upon the horse railway corporations using the street; that it provided for a mode of taxation, not uniform, in that it subjected the plaintiff to the same burden as the owner of property of many times the value of his own, but having only the same linear frontage, thus exempting the excess from taxation, which exemption was not authorized by the Constitution. The court holds that none of the points are well taken because (1) "charges for the cost of local improvements, against the property benefited by the improvements, although an exercise of the taxing power, are not such taxes as are referred to in the various clauses of the Constitution above quoted, and that they are neither embraced, nor were intended to be embraced, in them." Citing Lockwood v. St. Louis, 24 Mo. 20; *In re* Mayor of New York, 11 Johns. 77; Newby v. Platte County, 25 Mo. 269; Garrett v.

St. Louis, Id. 505; Egyptian Levee Co. v. Hardin, 27 Mo. 495; City of St. Joseph v. Anthony, 30 Mo. 537; Sheehan v. Good Samaritan Hospital, 50 Mo. 155; Adams v. Lindell, 72 Mo. 198; s. c., 5 Mo. App. 197; Spiegel v. St. Louis, 75 Mo. 145; Cormack v. Patchen, 53 Mo. 36; (2) that the "front foot rule" has been so long upheld that its validity can not now be questioned, citing Palmyra v. Morton, 25 Mo, 594; St. Joseph v. Anthony, 30 Mo. 538; Fowler v. St. Joseph, 37 Mo. 228; Powell v. St. Joseph and City of St. Joseph v. O'Donoho, 31 Mo. 345 and 347; St. Louis v. Clemens, 49 Mo. 554; Merrin v. Smith, 50 Mo. 528; Riley v. Kranor, 51 Mo. 541; Weber v. Schergens, 59 Mo. 390; St. Louis v. Allen, 53 Mo. 44. The court concedes that the horse railway company should have been compelled to pay the expense of improving that portion of the street occupied by it; St. Louis v. R. Co., 50 Mo. 94; but the ordinance and assessment were not void for that reason, but merely entitled the abuttors to the proper reduction of their bills; Newman v. Smith, 60 Mo. 292; Bank v. Arnoldin, 63 Mo. 229. The first two points simply re-assert well-established principles, although the second is decided differently in some States, we believe, but the third point was a very nice one, and doubtlesly properly decided. There were some other points in the case, involving the construction of provisions in the St. Louis Charter, which are of no interest outside of that city.

A decision somewhat resembling in its reasoning and characteristics is Dodge v. Kinzy, published in our last, has just been rendered by the Supreme Court of Missouri. The court, in Rannels v. Gehnor, after holding that the order of inquistion by which a person is placed under guardianship, is conclusive proof of his insanity, and that it can never be disputed colaterally, even in a suit in which the validity of a deed made by the ward is in issue, decide that a release of dower by a wife in her husband's estate may be avoided by her on the ground that he was incapable to execute a deed and, since the statute requires dower to be released by a joint deed, her release was ineffectual, because there was no joint deed. Neither was she estopped, since the doctrine of estoppel is not applicable to married women. The question as to the conclusiveness of the inquisition has been a mooted one and it is well that it is settled, though it seems to us that the contrary conclusion should have been reached.

There seems to be a conflict between the recent decisions of the Supreme Courts of Minnesota and Iowa, in the cases of Goss v. Brown and Iselin v. Griffith respectively. In the former, the court held, relying upon Hart v. Hoffman, 44 How. Pr. 168, that when a real estate agent finds a purchaser the law will presume that he is solvent and able to pay the price agreed to be paid, and that the *onus* is upon his employer to prove the contrary to disentitle him to his commissions. In the latter, it is held that the burden rests upon the agent to prove that fact, as a foundation for his claim. The latter view seems to us to be the most rational one; it is going a great ways to presume pecuniary responsibility in these days. At this rate, it will not be long before everything will be presumed, or judicially noticed.

The Supreme Court of Kansas has, in its recent decision in State v. Balch, which was a prosecution for libelling a candidate for office, adopted the same view as that taken in Briggs v. Garrett, recently published by us, Say the Court, "if the supposed libelous article was circulated only among the voters of Chase county, and only for the purpose of giving what the defendant believed to be truthful information, and only for the purpose of enabling such voters to cast their ballots more intelligently, and the whole thing was done in good faith—such article was privileged and the defendant should be acquitted, although the principal matters contained in the article may have been untrue in fact and derogatory to the character of the prosecuting witness.

TENANCY BY THE ENTIRETY.

The decision in the case of Dodge v. Kinzy, reported in last week's JOURNAL, may seem, from afar, an arbitrary application of the rules of common law, but, upon calm consideration, its logic becomes so apparent, that the correctness of the conclusions therein arrived at can not be doubted. It, too, renews the interest in an every-day practical subject, involved in such confusion that one attempting to throw light upon it, deserves the gratitude of the beneficiaries. At common law, husband and wife were regarded as one person. Hence arose an anomalous condition whenever property became vested in both during coverture. Blackstone, in reference to this matter, says: "If an estate in fee be given to a man and his wife, they are neither properly joint tenants, nor tenants in common; for husband and wife being considered as one person in law, they can not take the estate by moieties, but both are seized of the entirety, *per tout et non per my*; the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor."[1] In this statement he is supported by eminent authority.[2] But this definition is too narrow, since it limits the creation of such tenure to those estates as are acquired by gift only. Other eminent authorities, doubtless misled by Blackstone, have fallen into the same error.[3] In his great work, Mr. Preston gives a better and more extended definition, but limiting the acquisition of such an estate by a gift or devise;[4] and Jickling constantly violates his own definition. There is no doubt but that such an estate may be created by devise, gift, purchase, in its legal and popular sense, and by inheritance; although the latter seldom occurs, since husband and wife rarely succeed to property as heirs of the same person, though it happens where the parents of a deceased child inherit its property.[5]

A tenancy by entireties arises whenever an estate vests in two persons who are at the time of the vesture husband and wife. It is not necessary that they should be married when the grant, gift or devise made, or descent cast, provided when the estate vests, they are husband and wife. Thus, if a devise is made to a man and woman, and they marry before the death of the testator; or if a feoffment is made to them while single, but livery of seisin does not take place until after their marriage; or if they, after marriage, recover on a voucher to warranty annexed to an estate of which they are joint-tenants before such marriage, in all these cases they take by entireties.[6]

In a joint estate there are four requisites, *viz.:* Unity of interest, unity of title, unity of time and unity of possession; or, as Blackstone would have it, "joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession."[7] A tenancy by entirety, however, has an additional requisite, in that but two persons can hold it, who must be husband and wife, while any number of persons may be joint tenants.[8] If there are but two joint tenants, they hold by moities; and if more than two, they hold in other proportions. They are seized *per my et per tout*. But tenants by entireties, *i. e.*, husband and wife, have not an undivided moiety, but the entirety. Both are seized of the whole, and not each of an undivided moiety. "They are seized, not *per my et per tout*, but solely and simply *per tout*." Words of conveyance that make other persons joint tenants will make husband and wife tenants by the entirety.[9] So it has been said that the husband and wife "take but one estate, as a corporation would take, being by the common law deemed but one person."[10]

One of the earliest, if not the earliest case, on the subject, was one in which it appeared

[1] 2 Black. Com., 182.
[2] Bracton, b. 5, tr. 5, ch. 26; Litt., sec. 665; Co. Litt., 187; Bro. Abr. t. *cui in vita*, 8. See Plowd. Comm., 483; Vin. Abr., Baron & Feme.
[3] See Jickling on Anal. L. & Eq. Estates, 252; 2 Preston on Abstracts of Title, 39.
[4] 1 Prest. Est., 131.
[5] Gillan v. Dixon, 65 Pa. St. 395.
[6] See Jickling Anal. L. & Eq. Estates, 252; Co. Litt., 187; Nicholls v. Nicholls, cited Vin. Abr. Baron & Feme; Plowd. Comm. 483; Freeman on Co-tenancy, sec. 63.
[7] 2 Black. Com., 180.
[8] Topping v. Sadler, 5 Jones L., 357.
[9] Den v. Hardenbergh, 5 Halst. (N. J.) 42; s. c., 18 Am. Decs. 371.
[10] Taul v. Campbell, 7 Yerg. 319; s. c., 27 Am. Decs. 508.

that a man and his wife, took a conveyance of land "to them and their heirs." He was afterwards attainted of treason and executed, his wife surviving him. The King thereupon granted the lands to S, a third person, and his heirs. The heir of the widow, in a petition to the King, disclosed the whole matter; and, upon a *scire facias* against the patentee, recovered judgment to recover the lands.[11] The principle underlying this decision is, that when either the husband or wife dies, the one remaining instantly becomes the owner of the entire estate; or, more accurately speaking, upon the happening of the contingency of survivorship, if they be then seized of the estate, it passes to the survivor, and not to the heirs of the deceased. In the case referred to, the heir of the wife, the survivor, inherited the land from her to the exclusion of the King. The right of the survivor to the whole estate has been since frequently recognized both in England and in America.[12]

In illustration of the distinction between a joint tenancy and a tenancy by entirety, we may cite decisions upon the effect of statutes abolishing the former, without making any reference to the latter. In such cases, it has been universally held that such statutes have no effect upon a tenancy by entirety.[13] In Virginia, the statute abolished joint tenancies "of whatever kind the estates, or thing holden, or possessed be;" yet it was held not to effect the tenancy under discussion.[14]

But some courts have declared that tenancy by entirety can not be recognized in this country.[15] They do not base their conclusions upon the assumed abolition of common law, or upon any statute, but upon the fact that, up to their time the question seems not to have been decided, and that there had been a common understanding so long acquiesced in, that the court was unwilling to disturb it. In Ohio the rule of *jus accrescendi* in joint tenancies was said to be inapplicable to the condition of the people, and consequently inapplicable to a tenancy by entirety.[16]

The doctrine of unity of husband and wife, has been carried so far that, if a conveyance is made to them and to a third person, an undivided half vests in the husband and wife as tenants by entireties; the remaining undivided half in the third person. The husband and wife together are either a joint tenant, or tenant in common, with such third person.[17] They take as one person.[18] The same rule has been applied to legacies.[19]

[11] 1 Inst., 187, *a*; 1 Greenl. Cruise, 841.

[12] Back v. Andrews, 2 Vern. 120; s. c., Prec. Ch. 1; Green v. King, 2 Black. Rep. 1211; Doe v. Wilson, 4 B. & A. 303; Doe v. Parratt, 5 Term. R. 652; Moody v. Moody, Amb. 649; Shaw v. Hearsey, 5 Mass. 521; Commonwealth v. Kennedy, 119 Mass. 211; Abbott v. Abbott, 97 Mass. 136; Waler v. Coffin, 13 Allen, 217; *In re* Lowell, 22 Pick. 215; Fox v. Fletcher, 8 Mass. 274; Varnum v. Abbott, 12 Mass. 474, 479; Thornton v. Thornton, 3 Rand. 179; Hemingway v. Scaler, 42 Minn. 1; s. c., 2 Am. Rep. 586; Stuckey v. Keefe, 26 Pa. St. 399; Gibson v. Timmerman, 12 Mo. 385; Mariner v. Saunders, 5 Gilm. 124; Lux v. Hoff, 47 Ill. 427; Davis v. Clark, 26 Ind. 424; Arnold v. Arnold, 30 Ind. 305; Jones v. Chandler, 40 Ind, 588; Hulet v. Inlow, 57 Ind, 412; s. c., 26 Am. Rep. 64; Chandler v. Chandler, 87 Ind. 391; Edwards v. Beall, 75 Ind. 401, 406; Patton v. Rankin, 68 Ind. 245; Nicholson v. Caren, 45 Ind. 479; Doe v. Garrison, 1 Dana, 35; Rogers v. Grides, Id. 242, Moore v. Moore, 12 B. Mon. 664; Babbitt v. Scroggin, 1 Duval, 274; Elliott v. Nichols, 4 Bush. 502; Greenlaw v. Greenlaw, 13 Me. 186; Harding v. Springer, 14 Me. 407; Fisher v. Provin, 25 Mich. 347; Duff v. Beauchamp, 50 Miss. 531; Garner v. Jones, 52 Mo. 68; Woodford v. Higly, 1 Wis. 237; Todd v. Zachary, 1 Busbee Eq. 286; Thomas v. DeBaum, 1 McCarter Ch. 40; Robb v. Beaver, 8 W. & S. 127; Auman v. Auman, 21 Pa. St. 347; Bates v. Leeley, 46 Pa. St. 249; McCurdy v. Conning, 64 Pa. St. 39; Ames v. Norman, 4 Sneed, 692; Brownson v. Hull, 16 Vt. 309; Ketchum v. Walsworth, 5 Wis. 95; Bennett v. Child, 19 Wis. 364; *In re* Shaver, 13 Q. B. (U. C.) 605; Dean v. Hardenburgh, 10 N. J. L. 42; Robinson v. Eagle, 29 Ark. 202; Kip v. Kip, 33 N. J. Eq. 213; Allen v. Tate, 58 Miss. 585; Thornton v. Exchange Bank, 71 Mo. 221; Berrigan v. Fleming, 2 Lea (Tenn.), 271; Torrey v. Torrey, 14 N. Y. 430; Goelet v. Gori, 31 Barb. 313; Farmen v. Mechanics' Bank, 49 Barb. 162; Miller v. Miller, 9 Abb. Pr. (N. S.) 444; Beach v. Hollister, 3 Hun, 519; Freeman v. Barber, 3 T. & C. 574.

[13] Doe v. Hardenbergh, 5 Halst. (N. J.) 42; s. c., 18 Am. Dec. 371; Shaw v. Hearsey, 5 Mass. 521; *In re* Lowell, 22 Pick. 215, 221; Jackson v. Stevens, 16 Johns. 115; Jackson v. Carey, Id. 305.

[14] Thornton v. Thornton, 3 Rand. 179. Many of the cases previously cited are decisions upon this point. Hemingway v. Scaler, 42 Miss. 1; 2 Am. Rep. 586; McCurd v. Conning, 64 Pa. St. 39.

[15] Whittlesey, 11 Conn. 340.

[16] Sergeant v. Steinberger, 2 Ohio, 305; Wilson v. Fleming, 13 Ohio, 68; Penn v. Cox, 16 Ohio, 30.

[17] Litt sec. 291; Doe v. Hardenbergh, 5 Halst. 42; s. c. 18 Am. Dec. 371.

[18] Doe v. Wilson, 4 B. & A. 303; Barber v. Harris, 15 Wend. 615; Back v. Andrew, 2 Vern. 120; Bricker v. Whatley, 1 Vern. 233. *In re* Wylde, 2 D. M. & G. 724.

[19] Gordon v. Whieldon, 18 L. Rep. (N. S.) Chan. 5; s. c. 11 Beavan, 170; Atcheson v. Atcheson, 18 L. J. Rep. (N. S.) Ch. 230; s. c. 11 Beavan, 485; See Johnson v. Hart, 6 W. & S. 919; s. c. 40 Am. Dec. 565; Warrington v. Warrington, 12 Hare, 56, seems opposed to all authority.

If lands or property become vested in a man and woman before their marriage, they take the title either as tenants in common or as joint tenants, according to the wording of the instrument of conveyance, or the law of the State or country.[20]

As to the manner in which such an estate can be created, it was said in an old case that, "the same words of conveyance which would make two other persons joint-tenants will make a husband and wife tenants by the entirety, so that neither can sever the jointure, but the whole must accrue to the survivor."[21] A conveyance or devise "to them" naming a husband and wife, creates such a tenancy.[22] But a conveyance made to the husband and wife at her request, will be held to be only a conveyance to her, since it will be presumed that she acts under coercion.[23] It is not necessary that the husband and wife be named in the deed of conveyance as such.[24] But a conveyance to Celestine Beal and John Beal, to be held by Celestine "as her own property, John having the possession of the same during his lifetime; the possession to return to Celestine if she survives John," and both to pay taxes then due, was held to vest in her the title in fee subject to his life estate only if he survived her.[25]

The question has been mooted whether husband and wife can acquire an estate as tenants in common or joint tenants. In other words, can an estate be conveyed to them so that they may hold it as tenants in common or joint tenants? There are *dicta* to the effect that they can take an estate, only by entireties.[26] There are, also, cases directly in point, where a deed was made to husband and wife as tenants in common, and it was held to necessarily create an estate by entireties, because there was "a legal incapacity to take in severalty, arising from a legal identity; and a grantor can not remove that incapacity without the intervention of a trustee."[27] This question has been learnedly examined in Pennsylvania and Ireland and the same conclusions reached.[28]

In the Pennsylvania case, it is said and this is one of the grounds upon which the decision is based, that during coverture husband and wife can not hold or enjoy any other estate. This is manifestly incorrect for if they were tenants in common, or even joint tenants before marriage their coverture does not change the nature of the tenancy, and they still continue to hold the estate in the same manner.[29] If a co-tenant of her husband convey his interest to the wife, she becomes a tenant in common with her husband.[30] It is manifest that this assertion can not be substantiated. Preston[31] lays it down as a rule that husband and wife may take as tenants in common or as joint tenants. He afterwards, however, somewhat modifies this assertion.[32] At the time he wrote his works, there was no case to support his statement. Since then several courts have adopted his theory. Thus a deed made to husband and wife, "the one equal half part to each" was held to make them tenants in common.[33] So where the husband sold his supposed interest, and the purchaser brought a bill for partition against the wife, and the wife demurred to the bill, it was held that the demurrer must be overruled, because the bill alleged that the husband and wife held as tenants in common.[34] There are *dicta* that husband and wife may hold as tenants in common or otherwise.[35]

Over such an estate, the husband has the same and no greater control than if it were vested in his wife exclusively in her own right. Some courts have employed even broader language than this, but such expressions are usually mere *dicta*.[36] In some States, statutes

[20] 1 Inst. 1876; Moody v. Moody, Ambl. 649; Bevine v. Cline, 21 Ind. 37; Chandler v. Cheney, 37 Ind. 391.

[21] Green v. King, 2 W. Bla. 1213. See Martin v. Jackson, 27 Pa. St. 504; Doe v. Parratt, 5 T. R. 652; Farmers' Bank v. Gregory, 49 Barb. 155; Doe v. Hardenbergh, 5 Halst. 45; s. c. 18 Am. Dec. 371; Goelet v. Gori, 31 Barb. 314.

[22] Hamm v. Meisenhelter, 9 Watts, 350.

[23] Moore v. Moore, 12 B. Mon. 664; Babbitt v. Scroggin, 1 Duval, 273.

[24] Chandler v. Cheney, 37 Ind. 391; 1 Wash. Real Prop. 577.

[25] Edwards v. Beall, 75 Ind. 401.

[26] Green v. King, 2 W. Bl. 121; Rogers v. Benson, 5 John. Ch. 477; Jackson v. Stevens, 16 Johns. 115; Barber v. Harris, 15 Wend. 617.

[27] Dias v. Glover, 1 Hoff. Ch. 76.

[28] Stuckey v. Keefe, 26 Pa. St. 400; Pollok v. Kelly, 6 Ir. L. R. (N. S.) 373.

[29] See McDermott v. French, 15 N. J. Eq. 80.

[30] Moore v. Moore, 47 N. Y. 467.

[31] In his work on Estates, 1 Vol. 132.

[32] 2 Abstracts of Title, 41.

[33] Hicks v. Cochran, 4 Edw. Ch. 110.

[34] McDermott v. French, 15 N. J. Eq. 80.

[35] Chandler v. Cheney, 37 Ind. 391; Marburg v. Cole, 49 Md. 402; s. c. 33 Am. Rep. 266.

[36] See Doe v. Parrott, 5 T. R. 655; Bomar v. Mulline, 4 Rich. Eq. (S. C.) 80; Ketchum v. Walsworth, 5 Wis. 95; Bennet v. Child, 19 Wis. 365.

have been passed releasing the wife's separate estate from all control of her husband. This is particularly the case in Indiana. There it is held that he can in no manner control their estate by entireties, than he can her separate estate; that he can not convey it, or lease it, or mortgage it, or can it be sold on execution against him. Nor can she do the same, or permit the same to be done, to his exclusion.[37] His conviction of treason does not work a forfeiture of the estate.[38]

Under the common law, the husband has the right to take possession of his wife's separate estate; or, as it has been said, he acquires by marriage "during coverture, the usufruct of all the real estate which his wife has, in fee simple, feetail, or for life." This statement of the law has been applied to tenancies by entireties, and during his life, or during coverture at least he may dispose of the estate mortgage it or lease it, but the exercise of such power of disposition beyond his life, if his wife survives him will be a nullity.[39] If a husband contracts for the building of a house upon the property without her consent, a mechanics' lien arises upon it, during his life time; but no longer.[40] Of course both parties may mortgage it to secure the husband's debt, unless some statute prohibit it,[41] and a deed to them both, with power in her by joint deed with him, to convey the land, vests the estate in them by entireties; and a mortgage, pending the marriage will, upon her death, entitle the holder to the benefit of the survivorship.[42] So, if the husband may lease or sell the property held by entireties, or may mortgage the same to the extent of his life interest, it follows that it may be sold on execution against him. Of this there can be no doubt.[43] But, where it is held that he cannot sell, convey or mortgage the estate for life, it very necessarily follows that it cannot be sold on execution against him. And there are authorities which declare a sale on execution as to him is utterly void, and passes no title whatever.[44] In Indiana the question received a very elaborate examination, and the rule adopted that an attempted sale of the husband's interest was absolutely void.[45] So a crop raised on land held by them both is held by them in the same manner and subject to the same law as the land itself; and such crop is not subject to levy and sale on an execution against the husband.[46]

In Dodge v. Kinzy the court starts with the proposition that the husband can not mortgage such an estate so as to bind himself or the estate. The statute furnished the second element entering into the decision, viz. "A married woman shall not enter into any contract of suretyship, whether as indorser, guarantor, or in any other manner; and such contract, as to her, shall be void," If it is admitted that the giving by her of her mortgage on her own separate estate to secure the payment of her husband's debt is giving security for her husband, the conclusion reached by the court must conclusively follow. This the court so held. It is proper here to say that the decision that such a transaction amounts to one of suretyship on her part, is not generally accepted by the profession throughout the state as a correct construction of the statute quoted. And it has been urged that if this decision is to stand, a married woman cannot bind her inchoate right in her husband's estate by mortgage. This does not logically follow; for her inchoate estate, in a present property view, is no estate and may be swept away by

[37] Bevine v. Cline, 21 Ind. 37; Arnold v. Arnold, 30 Ind. 305.

[38] Washburn v. Burns, 34 N. J. L. 19; Beaumont's Case, 9 Rep. 140 *b*.; Co. Litt. 147 *a*.

[39] Taul v. Campbell, 7 Yerg. 319; s. c. 27 Am. Decs. 508; Ames v. Norman. 4 Sneed, 683; Den v. Gardner, 1 Spencer, (N. J.) 556; s. c. 45 Am. Dec. 388; Barber v. Harris, 15 Wend. 615; Jackson v. McConnell, 19 Wend. 175; s. c. 32 Am. Dec. 439; Jones v. Patterson, 11 Barb. 572; Beach v. Hollister, 3 Hun. 519; Meeker v. Wright, 11 Hun. 533; Farmer v. Gregory, 49 Barb. 155; Torrey v. Torrey, 14 N. Y. 430; McCurdy v. Canning, 64 Pa. St. 40; Bennett v. Child, 19 Wis. 365; Bates v. Dandy, 2 Atk. 207; Watts v. Thomas, 2 P. Wms. 364; Draper v. Jackson, 16 Mass. 486.

[40] Washburn v. Burne, 34 N. J. L. 19.

[41] McDuff v. Beauchamp, 50 Wis. 531.

[42] Berrigan v. Fleming, 2 Lea. (Tenn.) 271.

[43] Ames v. Norman, 4 Sneed. 692; Taul v. Campbell, 7 Gey. 719; S. C. 27 Am. Dec. 508; Bennett v. Child, 19 Wis. 362; Brown v. Gale, 5 N. H. 416; French v. Mehan, 56 Pa. St. 289; Brownson v. Hull, 16 Vt. 309.

[44] Thomas v. DeBaum, 14 N. J. Eq. 37; Jackson v. McConnell, 19 Wend. 178; Almond v. Bonnell, 76 Ill. 536.

[45] Chandler v. Cheney, 37 Ind. 391, 408; Bevine v. Cline, 21 Ind. 37; Simpson v. Pearson, 31 Ind. 1; Falls v. Hawthorn, 30 Ind. 444; Hulett v. Inlow, 57 Ind. 412, Davis v. Clark, 26 Ind. 424. See Kip v. Kip, 33 N. J. Eq. 213.

[46] Patton v. Rankin, 68 Ind. 245.

legislation. She and her husband can not convey it; nor can it be sold on execution. It is not protected by the constitutional clause restricting the power of the legislature to impair existing contracts as vested rights. In fact, we think the decision does not effect such mortgages.

Where dower exists, if the wife joins in a conveyance of land held by entireties executed by her husband, in token of her release of dower "and of her free consent thereto," without being named in the granting part of the deed, her estate in the land will not be defeated if she survives her husband, nor will she be precluded from asserting her title thereto after his death.[47] But, if they are named at the commencement of the deed as parties of the first part, and afterwards the parties of the first part are named as grantors, it is the deed of both of them.[48] When a statute prohibited the sale of liquors without a license, and made the owner of the house where a sale is made liable to a fine upon proof of the sale; it was held that a sale by the wife upon land held by her and her husband as tenants by entireties would render him liable to the fine, although she was not prosecuted. This was upon the ground that he had control over the premises.[49]

The husband and wife being oneperson in law there can be no partition of the estate held by them as tenants by entireties.[50] But, if husband and wife are divorced, their unity in law is destroyed, and they become tenants in common, or joint tenants, and they are then entitled to partition.[51] But it is said that if the husband has alienated such property during coverture, the alienee takes a title, not dependent on a continance of the marital relations; and that the wife, after a divorce is granted, is not entitled to the possession of her moiety from her husband's grantee, The purchase "not made in view of the contingency" of the wife's divorce, cannot be affected by it.[52]

A tenant by entireties may exist in an estate "in fee, in tail, for life, or for years, or other chattels real."[53] It may be of an estate in possession, remainder or reversion,[54] or of customary estates.[55] It may exist of a copyhold estate.[56] And where a husband and wife held an equitable title as tenants in common, and the legal title was afterward vested in them the equitable estate was kept alive so that it might descend to her heirs.[57] And where a husband purchased a walk in a chase, taking the patent to himself and wife and a third person, after his death it was said by the court, "It shall be presumed to be intended as an advancement and provision for the wife.[58] There are two courts[59] and a single author of repute,[60] that hold that husband and wife cannot take personal property as tenants by entireties. The doctrine of tenancy by entireties with the survivor's right to the whole has been declared applicable to a legacy.[61] So to a joint judgment in favor of husband and wife,[62] and to all choses in action taken by them in their joint names.[63] Notes payable to both will go to the survivor.[64] And, where a note was made to husband and wife as the consideration for separate real estate of the wife, the survivor was held to take the whole amount.[65] By permitting the note, bond, security or chose in action to be taken in the joint names of himself and his wife it is to be presumed that he intended that she should have the whole, on surviving him. Otherwise his action would be meaningless.[66] But where rent

[47] Waler v. Coffin, 13 Allen, 213; Strawn v. Strawn, 50 Ill. 33.

[48] Thornton v. Exchange Bank, 71 Mo. 221.

[49] Commonwealth v. Kennedy, 119 Mass. 211.

[50] Chandler v. Cheney, 37 Ind. 391; Strawn v. Strawn, 50 Ill. 33; Cooper v. Cooper, 76 Ill. 57; Harrer v. Wallner, 80 Ill. 197.

[51] Ames v. Norman, 4 Sneed. 696; Harrer v. Wallner, 80 Ill. 197; Lash v. Lash, 58 Ind. 526; 2 Bright on Husband and wife, 365.

[52] Ames v. Norman, 4 Sneed. 696.

[53] 2 Preston on Abstracts 39; Wiscot's case, 2 Rep. 60; 5 Bac. Abr. 244; Dowing v. Seymour, Cro. Eliz. 912.

[54] Purefoy v. Rogers, 2 Saund. 382;

[55] Glaister v. Hewer, 8 Ves. 195.

[56] Doe v. Parratt, 5 T. R. 652.

[57] Norman v. Cunningham, 5 Gratt. 70.

[58] Kingdon v. Bridges, 2 Vern. 56.

[59] Polk v. Allen, 19 Mo. 467.

[60] Bishop on the Law of Married Women.

[61] Cowper v. Scott, 3 P. Wms. 120.

[62] Bond v. Simmons, 3 Atk. 21; Anon, 3 Atk. 726; Coppin v.——2 P. Wms. 496.

[63] See Jickling Anal. L & Eq. Estates, 257; citing Temple v. Temple, Cro. Eliz. 791; Norton v. Glover, Noy. 149.

[64] Shields v. Stillman, 48 Mo. 82; Richardson v. Slade, 30 Vt. 191; Scott v. Simes, 10 Bosw. 314.

[65] Abshire v. Wilson, 53. Ind. 64. The same is equally so where they both held the bond. Allen v. Tate, 58 Miss. 595.

[66] In re Gadbury, 32 Law J. Rep. (N. S.) Ch. 780; Craig v. Craig, 3 Barb. Ch. 104; Rider v. Kidder, 10 Ves. 360; Christ's Hospital v. Rugdin, 2 Vern. 683; Draper v. Jackson, 16 Mass. 486.

XUM

is reserved to a husband and wife, and to the heirs of the latter, her heirs take the rent to the exclusion of the husband.[67] And if a wife endeavors to exchange her real estate for other real estate, under an agreement that the title to that received should be taken in her name, and, without her knowledge or consent the title is taken in the name of the husband, and the real estate so received is exchanged by the husband and wife, with money belonging to the husband, for other real estate the title of which is taken in the name of them jointly, the real estate so last transferred by them is not the property of the husband in considering the question whether or not the title of the real estate for which it was exchanged was taken in the names of the husband and wife for the purpose of defrauding creditors of the husband.[68]

Crawfordsville, Ind. W. W. THORNTON.

[67] Hill v. Sanders, 2 Bing, 112.
[68] McConnell v. Martin, 52 Ind. 434.

VOLUNTARY PAYMENTS.

Money voluntarily paid, which was not due, can not be recovered back; money which was not due, but paid on compulsion, may be recovered back. The simplest case illustrative of the former rule is where a man makes a gift of money. He can not have it back again because *volenti non fit injuria*, and where there is no wrong, there is no remedy. But if a man make a payment to save his life, he may recover, as the money was paid on compulsion.[1]

The difficulty which transpires in the application of the rule, is to determine just what degree and kind of compulsion, should excuse a payment. Not every form of compulsion will excuse a payment of money which was not due. For example, in the case of Marriott v. Hampton,[2] it was decided that a party could not recover money paid on compulsion of legal process. Marriott was sued for a debt which he had paid, and judgment was rendered against him which he was compelled to satisfy. Subsequently he found the receipt of the other party and sued for the amount paid. The court held that he had no right of action, because, although he had suffered wrong, yet *interest rei publicæ ut sit finis litium*, and to permit a party to open a judgment, whenever new evidence is discovered, would lead to interminable litigation. On the other hand, not every payment of money made voluntarily, will be held to be voluntary in law. In certain cases the law will imply compulsion, where the circumstances were such as to require some such fiction as a foundation for an action. All actions for money paid under a mistake of fact, may fairly be closed under this head.[3]

Lord Mansfield [4] lays down the broad rule, that an action for money had and received, will lie wherever the money ought not in justice to be kept. He says that such an action "is beneficial and ought to be encouraged. It lies only for money which *ex equo et bono*, the debtor ought to refund. It lies for money paid by mistake, or upon a consideration which has failed; or for money got through imposition, express or implied, extortion, oppression, or an undue advantage taken of the plaintiff's situation, contrary to law, made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant under the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."

But the rule so broadly declared has never received the unqualified assent of the courts. Mr. Justice Gibbs [5] expressly condemns it. Cases which very well illustrate the extravagance of the rule, are cases where money has been paid under a mistake of law. To permit a recovery under such circumstances would override the well known maxim, *Ignorantia legis non excusat*, which can not be disregarded without very obvious inconveniences.

[1] Astley v. Reynolds, 2 Strange, 915.
7 T. R., 269; 2 Smith L. Cas., 400.

[3] Butler v. Harrison, Cowp. 555; Taylor v. Hare, 4 B. & P. 262; Hern v. McNicholl, 1 Salk. 284; Cox v. Prentice, 3 M. & S. 344; Standish v. Ross, 3 Exch. 527; Columbus Ins. Co. v. Walsh, 18 Mo. 229; Mowatt v. Wright, 1 Wend. 360; Begl v. Dickason, 1 T. R. 285; Buel v. Boughton, 2 Denio, 91; Merchants' Bank v. McIntyre, 2 Sand. (S. C.) 431; Durant v. Ex. Com., 6 Q. B. 234.
[4] Moses v. McFarlan, 2 Burr. 1005.
[5] Brisbane v. Dacres, 5 Taunt. 143.

Probably it would be safe to say, that money paid which in good conscience ought not to be retained, may be recovered whenever such recovery is not opposed by some maxim or principle of law, of prevailing utility. For example, if a man make a payment of money under a mistake of fact, as to the wrong person, he may have it back, because his claim is manifestly just, and there is no good reason to the contrary.

Voluntary payments which we set out to discuss, are all payments of money which was not due, under such circumstances, that the recovery of the money so paid, is opposed by good reason and the maxims and principles of law. We shall illustrate this rule, and then state in what classes of cases payments have been held to be involuntary, in the hope that by means of the juxtaposition, we may more easily comprehend the reason and scope of the rule.

In the first place a payment of money under a mistake of law, as already stated is held to be voluntary, for reasons which are sufficiently obvious.[6]

Secondly, money paid without protest, unless under a mistake of fact, is voluntarily paid.[7] Protest need not be formal, but it must be sufficiently emphatic to give notice that an action may be brought for the recovery of the money. In many cases protest will of course be implied from the situations of the parties, as where the money is paid under duress of the person or property. Mr. Justice Gibbs, very clearly states the reason of this rule:[8] "Where a man demands money of another as a matter of right, and that other with full knowledge of the facts upon which the demand is founded, has paid the sum, he can not recover the sum so paid. If we were to hold otherwise, I think many inconveniences may arise; there are many doubtful questions of law; when they arise the debtor has an option, either to litigate the question or submit to the demand. By submitting to the demand, he closes the transaction. He who receives the money, may spend it in the full confidence that it is his, and it would be mischievous and unjust to rip up the matter and permit the party who has acquiesced in the right to recover the money back."

Thirdly, mere protest however will not always save a right of action.[9] To hold otherwise, would be to allow a party to defer the settlement of his difficulty, until it suited his convenience. In the meantime his opponent may lose his evidence; his witnesses may pass out of his control; yet, as the other is entitled to try his suit at his pleasure, within the period of limitation, he would deprive the other party of this privilege, if mere protest is permitted to save to the other party a right of action. Protest therefore has a saving grace, only where there is some hardship in the situation of the protestant, which may be avoided by payment, and which is sufficient in law to excuse the concession.

We shall now proceed to set out the classes of cases wherein the courts have allowed a payment of money to be excused by the situation of the payor. Three things the law was designed to protect: life, liberty and property. If either of these be wrongfully threatened, and the danger may be avoided by a payment of money, the law will hold such payment to be involuntary and raise a promise to refund the money.[10]

Duress of Person.—If a man pay money to save his life or preserve his liberty, he may have it back.[11] The justice of such a rule is so manifest as to require no illustration. Certain things, however, are to be observed in the application of it to particular cases. The danger must be imminent, and such that it can be avoided only by the payment of money.[12] If therefore a man have a day in court and an opportunity to try his rights, he will

[6] Lowry v. Bourdieu, Doug. 471; Herbert v. Champion, 1 Camp. 134; Town of C v. Burnett, 34 Ala. 400; Branham v. Mayor San Jose, 24 Cal. 585; Bucknall v. Story, 46 Cal. 589; Sprague v. Birdsall, 2 Cowen, 419; Clarke v. Dutcher, 9 Cowen, 694, 15 Rep. 221; Mut. Law Inst. v. Enstein, 46 Mo.200; Benson v. Monroe, 7 Cush. 125; Supervisors v. Briggs, 2 Denio, 26; Downs v. Donnelly, 5 Ind. 496; Silliman v. Wing, 7 Hill, 159; Jenks v. Lima, 17 Ind. 326. But see, Daniell v. Sinclair, 6 L. R. App. Cas. 181; 50 L. J. P. C. 50; 44 L. T. N. S. 257; 29 W. R. 569.

[7] Elliott v. Swartwant, 10 Pet. 137; Smith v. Redfield, 27 Me. 145; Sprague v. Birdsall, 2 Cowen, 419; Taylor v. B'd of Health, 31 Pa. St. 73.

[8] Brisbane v. Dacres, 5 Taunt. 143.

[9] Brown v. McKinnally, 1 Esp. 279.

[10] Authorities below.

[11] Payne v. Chapman, 4 A. & E. 364; Richardson v. Duncan, 3 N. H. 508; Duke of Cadwal v. Collins, 4 A. & E. 858; Harvy v. Boyd, 42 Ill. 336.

[12] Cook v. Boston, 9 Allen, 393; Garrison v. Tillinghast, 18 Cal. 404; Preston v. Boston, 12 Pick. 7; Unwin v. Leaper, 1 M. & G. 747; Taylor v. B'd of Health, 31 Pa. St. 73; Cloftin v. McDonough, 33 Mo. 412.

XUM

not be excused if he pay money for no one can be heard to say that he had the law and the facts with him, and yet feared that he would be wrongfully committed.[13] The case of Fellows v. School District,[14] will illustrate the first point. F. was arrested for failure to pay an unconstitutional school tax. He promised to pay the tax, if he were released, and was thereupon permitted to go free. Persuant to his promise he paid the tax, and then instituted suit to recover the money. The court denied his right of action, because it did not appear that there was any immediate danger of his re-arrest.

Duress of property.—If a man be compelled to pay unlawful demands to save or obtain possession of his property, he may recover the amount paid. A more salutary rule cannot be found in the books. It is justified by the movable and perishable character of personal property and the uncertainty of the personal remedy against the wrongdoer, or by the inadequacy of any other remedy to avoid or repair the evil apprehended.[15] It enables a man to avoid many inconveniences, to defer the settlement of his difficulty, until his property is out of danger. It does not operate unjustly against the other party, for as the payment is made under protest, he has opportunity for reflection, and may or may not insist upon his demand. The rule is beneficial in all cases of bailment where the bailee makes an excessive or illegal charge, the demand may be paid under protest, and an action instituted to recover the amount unlawfully claimed.[16] It enables a man to avoid a wrongful sale of his property under color of official authority, as for example, if a sheriff levy on property which does not belong to the judgment debtor, the owner is compelled to pay the judgment to save his goods, he may get his money back in an action at law.[17] It avoids the danger of submitting to a tax, the legality of which is questioned; for a man may pay the tax under protest, if his property be in danger, and afterwards recover the amount paid by showing the illegality of the levy.[18] It enables a man to avoid an injury which would be irremidiable. In Cartwright v. Rowly,[19] Lord Keanyon refers to a case within his recollection where it was held that money paid for the production of court rolls at a trial, which the defendant had no right to charge for might be recovered, as the payment was not voluntary if the rolls were indispensable in the trial of the court. Where the manager of a theater was prevented by an officer of the law from exhibiting his company, until he had paid an illegal license fee he was permitted to recover where the money was paid under protest and loss was thereby avoided.[20]

To sum up this whole matter in order to determine whether or not a particular payment is voluntary, regard must be had to the situation of the parties, the effect of the decision in the particular case and above all, to the maxims and principles of law *quid maxima ejus dignatas et certissima authoritas et que maxime omnibus probetur*.[21] If considering these things it seems to be just and politic to permit a recovery of the money paid, then the payment is involuntary.

St. Louis, Mo. ISAAC H. LIONBERGER.

[13] Town of C. v. Burnett, 34 Ala. 400.
[14] 39 Me. 559.
[15] Flutwood v. City of N. Y. 2 Sand. 479.
[16] Astley v. Reynolds, 2 Strange, 915; Shaw v. Woodcock, 7 B. & C. 73; Parker v. G. W. R. R. 7 M. & G. 253; Parker v. B. & E. R. R. 7 Eng. L. & E. 528; Tutt v. Ide. 3 Blatch. 249; Briggs v. Boyd, 56 N. Y. 289; Harmony v. Bingham, 12 N. Y. 99; Schorfe v. Halifax, 7 M. & W. 288; Chase v. Taylor, 4 H. & J. 54; Chase v. Dwinall, 7 Me. 134; Clinton v. Strong, 9 John 369; Quinnett v. Washington, 10 Mo. 54.
[17] Adam v. Town of Litchfield, 10 Conn. 127; Preston v. Boston, 12 Pick. 7; Valpy v. Manning, 1 C. B. 593; Snowdon v. Davis, 1 Taunt. 359.
[18] Elliot v. Swartwant, 10 Pet. 139; Smith v. Redfield, 27 Me. 145; Stephan v. Daniels, 27 O. St. 527; Erskine v. Van Arsdale, 15 Wall. 75; Branam v. Mayor, 24 Cal. 585; Union Ins. Co. v. City of Alleghany, 15 Rep. 221.
[19] 2 Esp. 723.
[20] Baker v. Cincinnatti, 11 Ohio St. 534.
[21] 1 Coke 17.

CERTIFICATE OF STOCK NOT NEGOTIABLE—SALE OF STOLEN CERTIFICATES PASSES NO TITLE.

BARSTOW v. SAVAGE MIN. CO.

Supreme Court of California, December 26, 1882.

Certificates of stock are not securities for money in any sense, and are not negotiable; and if shares of stock of a corporation standing in the name of A on the books of the corporation, owned by B, the certificate being properly indorsed, and if the certificate be stolen without the fault of B, the purchaser from the thief takes no title, and B may pursue the property.

Appeal from Superior Court, San Francisco.

C. Bartlett and *C. L. Smith* for appellant; *G. W. Gordon*, *J. A. Waymire*, *Lloyd*, *Newlands & Wood* for respondent.

MYRICK, J., delivered the opinion of the court:

The facts of this case, as presented in the findings, are substantially as follows;

Prior to February 5, 1879, the defendant, the Savage Mining Company, duly issued its three certificates of stock, No. 24,843, certifying that C. A. Schmitt, trustee, is entitled to thirty shares of the capital stock of the said company, transferable on the books of the company by indorsement on and surrender of the certificate No. 25,537 in the name of Randolph, Mackintosh & Company, trustees, for ten shares, and No. 25,704 in the name of Greenbaum, Helbing & Company, trustees for ten shares, in like tenor as the first. On the 5th of February, 1879, the plaintiff purchased from the owners thereof, for value paid, the said fifty shares, and received the said certificates properly indorsed. Thereafter, on or about May 1, 1879, the said certificates were, without any fault or negligence of the plaintiff, stolen from him, and were on the 6th of May, 1879, sold and delivered by the thief to the defendant Rogers, he, Rogers, purchasing the same in the usual course of business for value, without notice of any defect in his vendor's title. The plaintiff never sold the certificates or the stock which they represent, or authorized or acquiesced in, or ratified such sale. On the 30th of May, 1879, plaintiff demanded of the defendant, Rogers, the return of the certificates, and Rogers refused to deliver them. The intervenor, Kutz, purchased the certificate for thirty shares (subsequently to the theft) in the ordinary course of business, for value, without notice of any defect in his vendor's title, and whatever title he (Kutz) has, he derived from Rogers. None of said fifty shares have been transferred on the books of the Company from the names of the parties set forth in said certificates, except the ten shares represented by certificate No. 25,537, which have been sold for assessments. After the theft the plaintiff duly demanded of the Company a transfer of said fifty shares from the names in which they stand as aforesaid, to his own name, and the issuance to him of a certificate therefor, and such transfer and issuance were refused. On the 11th of August, 1879, the intervenor presented certificate No. 24,843 to the Company, offered to pay any assessment levied on the stock represented thereby, and demanded a transfer to himself of the thirty shares and the issuance to him of a new certificate, which transfer and issuance were refused on the ground that the Company had already been notified by plaintiff of his ownership of the stock and of the theft, and been directed to stop transfer thereof, and had been, in connection with Rogers, sued by plaintiff concerning the ownership of the stock. The court then found as to the value of the stock at different times involved in the transactions. From these facts the court below concluded as law that the intervenor, Kutz, was entitled to judgment against the plaintiff and the Company for his costs, and against the company for $460 damages, and that the defendant, Rogers, was entitled to judgment against the plaintiff for his costs, and rendered judgment accordingly. From this judgment the plaintiff appealed.

It will be seen from the foregoing, that the question for consideration is, if shares of stock of a corporation standing in the name of A on the books of a corporation be owned by B, the certificate being properly indorsed, and if the certificate be stolen without the fault or negligence of B, does the purchaser from the thief take title so as to prevent B from claiming the property?

1. It is well known to be the general rule that a thief acquires no title to stolen property, and that he can pass none. "The mere possession of chattels, by whatever means acquired, if there be no other evidence of property or authority to sell from the true owner, will not enable the possessor to give a good title." *Covill v. Hill*, 4 Denio, 323. To the general rule above stated there are exceptions as to money and negotiable securities.

2. A negotiable instrument is defined to be "a written promise or request for the payment of a certain sum of money to order or bearer." (Section 3,087, Civil Code.) There are six classes of negotiable instruments, namely: 1, bills of exchange; 2, promissory notes; 3, bank notes; 4 checks; 5, bonds; 6, certificates of deposit. (Section 3,095, Civil Code.)

A certificate of stock, namely, that A is the owner of shares of stock in an incorporated company, is not a promise or request for the payment of money, nor does it contain any of the elements of such promise or request. "A negotiable instrument must not contain any other contract than such as is specified in this article." (Section 3,093, Civil Code.)

"The distinction between all these [notes, bills, corporation bonds] and corporate stocks is marked and striking. Certificates of stock are not securities for money in any sense, much less are they negotiable securities. They are simply the muniments and evidence of the holder's title to a given share in the property and franchises of the corporation." Mechanic's Bank v. New York, etc. R. Co., 13 N. Y. 627; Sherwood v. Meadow Valley Mining Co., 50 Cal. 412.

The case last above cited, Sherwood v. Meadow Valley Mining Co., was an action based on the following facts: One Schmeidell was the owner of twenty shares of the stock of the defendant and held a certificate therefor, issued to himself as trustee, and he sold the shares and delivered the certificate, properly indorsed, to Levy, who lost the same, not having had the stock transferred on the books of the corporation. The plaintiff purchased (as he supposed) the stock, and received delivery of the certificate, for value, in the usual course of his business as a stock broker. It

XUM

was held that the plaintiff acquired no right to the stock.

In the subsequent case of Winter v. Belmont Mining Co., 53 Cal. 428, the facts were that Winter was the owner of certain shares of stock, and had them transferred on the books of the company to the name of "M, trustee," who indorsed the certificates in blank, and delivered them to Winter. Subsequently M stole the certificates from Winter, and sold them in the market in the ordinary course of business. The court, in commenting on the statute providing that shares of stock may be transferred by indorsment and delivery of the certificate, but that the transfer is not valid except as between the parties until entered on the books of the corporation, and on certain prior cases holding that until such entry the stock may be sold on execution against the person in whose name the stock stood, applied that principle to the case before it of stolen certificates, and held that the purchaser from M, the thief, took a good title. We are not prepared to follow that case (Winter v. Belmont Mining Co.), in what is said in the opinion regarding the negotiability of certificates of stock; but, on the contrary, are of opinion that the principle that the thief of stolen property (it not being money or negotiable securities) can pass no title, should be maintained, unless the facts presented by a case should bring it within the law as stated in McNeil v. The Tenth National Bank, 46 N. Y. 325: "When the owner of property confers upon another an apparent title to or power of disposition over it, he is estopped fron asserting his title as against an innocent third party who has dealt with the apparent owner in reference thereto without knowledge of the claims of the true owner." Upon refering to the transcript in Winter v. Belmont Mining Company we observe the findings of the court state that Winter delivered his certificates to M with permission that the latter have the shares of stock transferred on the books and certificates issued to him (M), for the purpose of enabling the said M to vote at the then coming election as the owner of said stock. Here was an element upon which, perhaps, it might properly be held that Winter was estopped from saying, as to an innocent purchaser, the title did not pass; because, for one purpose at least, viz: to vote, he had authorized M to appear to be and act as the owner.

But if the purchaser from one who has not the title, and has no authority to sell, relies for his protection on the negligence of the true owner he must show that such negligence was the proximate cause of the deceit.

In the case at bar, the owner, Barstow, did not clothe the thief with any apparent power to pass title. The certificates (though properly indorsed) remained in the names of the former owners, and when Rogers purchased he was not dealing with any one who had apparent authority from the owner to make a disposition of the stock; he dealt with one having nothing beyond bare possession, which, as said above, does not clothe the posssesor with the power of selling.

In conclusion, then, we are of opinion, and decide, that where stock of an incorporation stands on the books in the name of A, and the stock is owned by B, and the certificate (though properly indorsed) is stolen from B without his fault, the thief can pass no title and B may pursue his property.

The judgment is reversed and the cause is remanded with instructions to render judgment in favor of plaintiff, but it is not manifest that the plaintiff can have judgment against Rogers for the value of the stock, and also that the corporation issue new certificates to him; he may have one or the other, as he elects, but not both. It is stated in the findings that the shares represented by certificate No. 25,537 have been sold for assessments. Plaintiff being the owner of those shares, he should have paid the assessments, and neither Rogers nor the corporation should have been held responsible for his omission to do so.

We concur: SHARPSTEIN, J., MCKINSTRY, J., THORNTON, J., MORRISON, C. J.

I concur in the judgment: ROSS, J.

EXEMPTIONS — EXTRA TERRITORIAL FORCE OF STATUTES—GARNISHMENT—FOREIGN CORPORATIONS — JURISDICTION.

BURLINGTON, ETC. R. CO. v. THOMPSON.

Supreme Court of Kansas, January 3, 1884.

1. The laws of a State, and in this are included its exemption laws have no extra territorial force.

2. To garnishee proceedings in the courts of this State, it is no sufficient answer that the debt of the garnishee to the defendant is by the laws of the State where both defendant and garnishee reside, exempt from seizure under such process.

3. A foreign corporation coming into this State, and leasing property and doing business here, may be garnished for a debt due to one of its employes, although such employe is not a resident of this State, and although the debt was contracted outside of the State.

4. Where at the time of service of garnishee process, the defendant is in the employ of the garnishee, and continues thereafter in such employment, the garnishee proceedings bind only the amount due at the date of the service of process, and do not reach to amounts subsequently earned even under a prior contract of employment.

Error from Atchison county.

W. W. Guthrie, for plaintiff in error; *Messrs. Hudson & Tufts*, for defendant in error.

BREWER, J., delivered the opinion of the court:

The facts in this case are as follows: plaintiff in error is a corporation created under the laws of the State of Nebraska, and having its principal office in the city of Omaha in that State. It has leased and is operating a line of railroad running from Lincoln, Nebraska, to Atchison, Kansas, some 37 miles of which are within the limits of this State. In the operation of this road, it employs a station agent at the city of Atchison. One Jackson was in the month of November, 1881, a brakeman in the employ of said corporation, and employed on its trains running from Lincoln to Atchison. He was a married man, residing with his wife at Lincoln, Nebraska. On November 9, 1881, defendant in error commenced an action before a justice of the peace in the city of Atchison, against said Jackson, and caused garnishee process to be served on plaintiff in error. At that time plaintiff in error was indebted to said Jackson for wages already earned during the month of November in the sum of $13.50. He continued in its employ until the 19th of the month when the wages for the month then due him, $26.25 were paid to him by the corporation. It also appears that by the laws of Nebraska, the the wages for laborers for sixty days are exempt from seizure on legal process. So that we have these facts upon which to determine the rights of the parties.

The employer is a corporation created by and existing under the laws of Nebraska, with its principal office and center of business in that State. Its employe engaged in manual labor, also resides in that State. By the laws of Nebraska, where both employer and employe reside, his wages are exempt. The employer leases property and transacts business in this State. A creditor of the employe comes into the courts of this State and garnishes the employer for wages due the employe, claiming that though such wages are exempt under the laws of the State of Nebraska, they are not under the laws of the State of Kansas. Can such an action be maintained? We think these propositions are sound. The laws of a State have no extra territorial force. This, as a general proposition, is unquestioned, and includes within its scope, exemption, as well as other laws. So although the laws of Nebraska, where employer and employe reside exempt laborers' wages absolutely, it does not follow that the courts of another State will, in controversies pending before them, enforce the same exemption. On the contrary, the matter of exemption, being one affecting the remedy at least within certain limitations is one controlled by the *lex fori*, and not by the *lex loci contractus*.

Therefore, although both creditor and debtor reside within the limits of the State, the exemption laws of that State do not control garnishee proceedings in another. Helfenstein v. Cave, 3 Ia. 287; Newell v. Hayden, 8 Ia. 140; Moore v. C. R. I. & P. R. Co., 43 Ia. 385, 388; Conley v. Chilcote, 25 Ohio St. 320: B. & O. R. Co. v. May. 25 Ohio St. 347; Pierce v. C. & N. W. R. Co., 36 Wis. 283; Morgan v. Neville, 74 Pa. St. 52; Lock v. Johnson, 36 Me. 464; C. & A. R. Co. v. Ragland, 84 Ill. 575. It may be conceded that in the courts of a state, any citizens of that State may be enjoined from resorting to the courts of any other State for the purpose of evading the exemption laws of his own State. Snook v. Snetzer, 25 Ohio St. 516. But no such doctrine or implication therefrom applies in the case at bar, for while the debtor and the garnishee were citizens of Nebraska, the residence of the plaintiff, the creditor is not disclosed.

It does not appear that he was a citizen of Nebraska, seeking through proceedings in a court of a sister State to avoid the exemption laws of his own. For aught that appears he is a citizen of Kansas appealing only to the laws and the courts of his state for the collection of his debt, and simply denying that the laws of another State shall prevent the collection of his debt according to the laws and procedure of his own State.

Again, no question arises here as to the effect of a judgment against the garnishee in the courts of this State as against proceedings to collect the debt in the State of Nebraska where the debt was created. As to that question, the cases of Pierce v. R. Co., 36 Wis. 283, and Moore v. R. Co., 43 Ia. 385, seem to be divergent. As to which states the law correctly, we need not now inquire. The question in this case is not what is the effect of a judgment against a garnishee, but what ought to be such judgment. Of course, no debtor should be required to pay his debt twice; but, at the same time, if he goes into a State outside of the State of his residence and transacts business therein, he must expect as to all matters of procedure and remedy to abide by the laws of that State. He may not claim the privileges and the protection of the laws of the State into which he enters and transacts business without submitting to the burdens and obligations of such laws. Coming into this State to transact business he must abide by the exemption laws of this State; and when a party who, for aught that appear, is a citizen of this State, invokes the process of our courts and the rules of our statutes to secure the payment of a just debt, a garnishee may not reply that, by the laws of the State where he resides and where his employe also resides, his debt to such employe is exempt from all garnishee process. It can not be doubted that the courts of the State where he resides will respect a judgment rendered against him in this State, provided he has made a perfect and full disclosure and a reasonable defense against the claim presented, and the case of 36 Wis. 283, contains nothing contradicting this proposition. We think, therefore, that it may be laid down as a legitimate conclusion from the authorities that, as the laws of a State have no extra-territorial force, and as the plaintiff in this action does not appear to have been a resident of Nebraska or under any obligation, legal or moral, to respect the laws of that State, that his proceedings to

compel the payment of a just debt from the defendant as garnishee can not be defeated by the fact that the laws of the State where both debtor and garnishee reside exempt the debt from seizure under such process.

Again, so far as any question arises under the laws of this State defining exemption liability it is enough to say that while the testimony disclosed is not perfectly satisfactory, it does not appear that all the testimony bearing upon that question is preserved in the record. Hence we can not affirm that there was any error in the ruling of the trial court in this respect. As to the liability of defendant to garnishee proceedings like this it must be sustained. Whatever doubts may have existed in some States, it seems to us clear that a corporation or individual coming into this State, leasing property and transacting business here, becomes liable to garnishee proceedings. A mere debt is transitory and may be enforced wherever the debtor or his property can be found, and if the creditor can enforce the collection of his debt in the courts of this State, a creditor of such creditor should have equal facilities. Braser v. Ms. Co., 21 Wis. 506; Fithian v. R. Co., 31 Pa. St. 114; Bank v. R. Co., 45 Wis. 172; Hannibal, etc. R. Co. v. Crane, Supreme Court of Ill., reported in 16 West. Jur. 360.

A cross petition in error has been presented. So far as the attempt to attach a new case made or further portions of the record is concerned, it is unauthorized, and all such matter must be stricken out. Upon the case made itself counsel present this question. At the time of service of garnishee process the Railroad Company was indebted to Jackson in the amount for which it was adjudged liable. He continued in the company's employ till the latter part of the month under the same contract of employment. Now, did the garnishee process bind only the amount earned by defendant and due from the garnishee at the time of service of process or does it reach to all earned under the existing contract up to the answer day? This is the third case stated in the opinion in Phelps v. R. Co., 28 Kas. 165, and left undecided at that time. Presented now, we are compelled to pass upon it. The ruling of the district court was correct. Garnishee proceedings mean this. The creditor takes the place of the debtor. "Only this and nothing more." The former takes only that which the latter could enforce. That which the garnishee owes whether due or not, is appropriated, but the process has no future effect. It does not touch that which may thereafter be earned, but which will be earned only by the debtor's subsequent labor. This is in accord with the principles underlying garnishee proceedings as stated by the text-writers, and is just and reasonable.

There being no other question, the judgment is affirmed.

NOTE.—*In General.* Rorer in his Inter-State Law, 128, states the doctrine held by the weight of authority to be, that when debts or liabilities are payable in one State, the debtor cannot be garnisheed in another State, for he is only liable to the court as he is to his creditor, and he is not bound to respond to any court in a different State than where his duty requires him to pay his creditor. His liability can be enlarged by no court, citing Buxter v. Vincent, 6 Vt. 614; Kidder v. Packard, 13 Mass. 81; Ray v. Underwood, 3 Pick. 302; Ill. Central R. Co. v. Cobb, 48 Ill. 402; Jones v. Winchester, 6 N. H. 497; Hart v. Anthony, 15 Pick. 445, and others.

Foreign Exemption Laws. It is questionable whether the bulk of the cases cited by the court in the principal case support its conclusion. In Newell v. Hayden, 8 Iowa, 140, the property was actually attached in Iowa, and it was claimed that as the property was *not* exempt in Illinois, where the debtor resided, he was entitled to no exemption in Iowa. But the court held differently. In Moore v. C., R. I. & P. R., 43 Iowa, 385, 388, the facts in the original suit were the same as in the principal case, but the garnishee did not set up the exemption laws of Iowa. The servant then brought a suit in Iowa against the corporation, and it was held that it was not bound to set up the exemption laws of Iowa, in defence of the original suit, and the payment of the judgment against it was a perfect defence. It was not decided, however, that it could not have set the exemption laws of Iowa. In Conley v. Chilcote, 25 Ohio St. 320, there was no question raised as to the effect of statutes of other states. The case merely decides that an exemption may be waived by the debtor, and the garnishee cannot object. In B. & O. R. Co. v. May, 25 Ohio St. 347, the same question arose as in Moore v. C., R. I. & P. R. Co., *supra*. In Pierce v. C. & N. W. R., 36 Wis. 283, even this proposition is denied; it is there held that when a corporation is garnisheed in the courts of a foreign State, for a debt due to a citizen of another State, it must set up the exemption laws of the latter State, in the defendant's favor, and resist any judgment; and, not having done so, it was liable to be sued in the latter State for the amount of the debt. This conflicts seriously with the decision in the principal case, for the garnishee can not be compelled to contend for an exemption which cannot be recognized. The court practically decided that it was the duty of the courts of the foreign State to give effect to the exemption laws of Wisconsin, and the garnishee was bound to compel the performance of that duty. The contrary is held in Pennsylvania; Morgan v. Neville, 74 Pa. St. 52.

Comity. It has been stated to be the general rule of law, that the courts of one State can not permit the statutes of another State to have any extra territorial force; but any extension is based upon mere comity, which can have no influence where the policy of the two sovereignties is dissimilar. The principle of comity does not require the courts of one State to recognize and enforce to the prejudice of its own citizens, assignments made by insolvent debtors under the laws of another State; but they will secure justice to domestic creditors without regard to the foreign law and the assignment. Johnson v. Parker, 4 Bush. 152. In Beard v. Bayse, 7 B. Mon. 144, the court says: "the laws of sister States can not be brought to Kentucky to create a right, nor to regulate the mode of exercising or asserting it, nor to establish a right in contravention of our laws or policy, and to the injury of our citizens, but they may be brought here to prove a right which existed in another State, while the parties and subject were wholly within the subject of that State. "The power of determining whether and how far, or with what conditions, the laws of one State or any rights dependent upon them, shall be recognized in another, belongs to the legislature of the latter; the

comity involved is that of the States and not of the courts, and the judiciary must be guided in deciding the question by the policy of the legislature." Thompson v. Waters, 25 Mich. 214.

Foreign Statutes.—The penal laws of a State, regardless of policy, are never given any extra territorial effect. Commonwealth v. Green, 17 Mass. 515, 540; Graham v. Monsergh, 22 Vt. 543; Slack v. Gibbs, 14 Vt. 357. This applies to bastardy suits. Ib. But see Kobb v. People, 85 Ill. 336. So if the statutes of one State disqualify a witness for crime, such statute can not disqualify him in a foreign State. * * Commonwealth v. Green, 17 Mass. 515. So a statute of a State where goods are obtained from a vendor by fraud, permitting the vendor to bring *assumpsit* before expiration of the credit, can be of no avail in the courts of another State where the common law rule obtains. Galloway v. Holmes, 1 Doug. 330. See Collins Iron Co. v. Burkham, 10 Mich. 283. So, a deed of real estate must be made in accordance with the laws of the State where the property is situated. Osborn v. Adams, 18 Pick. 245. Although all the parties reside in another State. Goddard v. Sawyer, 9 Allen, 78. See 10 Allen, 433. But where a statute of another State provided that an officer's certificate should be conclusive evidence of the fact, the statute will be given effect. Belts v. Bagley, 12 Pick. 572. So a mortgage of personal property in one State, but executed and in another in accordance with the laws of the latter, is good in the former, though no delivery of the property is made to the mortgagee. Rhode Island Central Bank v. Danforth, 14 Gray, 123. A deed void by the statutes of the State where executed for the want of an attesting witness, is void in every State. Bent v. Kimball, 5 Port. 137. See Drake v. Glover, 30 Ala. 382; Young v. Pearson, 1 Cal. 448. But a lien created by the statute of one State on property sold by an administrator, will not be enforced in the courts of another State in which the property had been sold to a *bona fide* purchaser. Marsh v. Ellsworth, 37 Ala. 565; S. P. Donald v. Hewitt, 33 Ala. 534. So, although the charter of a charitable corporation prohibited it from taking property beyond a certain amount or certain kinds of property, such statute will not be given effect in other States. White v. Howard, 38 Conn. 358. Where the laws of a State prohibit a marriage by a divorced party without the consent of the court granting the divorce, and the party goes into another State and marries there, the marriage will not be void, even in the courts of the former State. Commonwealth v. Lane, 113 Mass. 458.

Statutes of Limitations.—The statute of limitations of a State can have no effect outside of its jurisdiction. Huber v. Steiner, 2 Scott, 304. See Harris v. Quine, 4 L. R. Q. B. 653; Ruckaboye v. Lulloobboy Mottichund, 5 Moore, Ind. App. 234. And it is no defense that an action is barred by the statutes of limitations of the State where the cause of action arose. Jones v. Jones, 18 Ala. 248; Towns v. Bardwell, 1 Stew. & Port. 86; Crawford v. Childress, 1 Ala. 482; Carter v. Anderson, 21 Ark. 287; Perkins v. Guy, 55 Miss. 153; Power v. Hatheway, 43 Barb. 214; Bulger v. Roche, 11 Pick. 36; Townshend v. Johnson, 9 How. U. S. 407. But where a foreign statute extinguishes a debt, the debt is extinguished everywhere. Gaus v. Frank, 36 Barb. 320; Rucks v. Taylor, 47 Miss. 191; Shelby v. Guy, 11 Wheaton, 361; Brent v. Chapman, 5 Cranch, 358. So, if a prescriptive title is gained in another State, a mere removal into a foreign jurisdiction can not affect the possessor's title. Howell v. Hair, 15 Ala. 194; Newcombe v. Leavitt, 22 Ala. 631; Brown v. Brown, 5 Ala. 508; Doyle v. Beuler, 7 Ala. 246.

Interest and Usury.—Interest will be given at the rate allowed by the statutes of the State where the debt was created. Robinson v. Bland, 2 Bur. R. 1077; Ferguson v. Fyffe, 8 Cl. & Finn. 121; Andrews v. Pond, 13 Pet. 65; Little v. Riley, 43 N. H. 109; French v. French, 126 Mass. 360; Hosford v. Nichols, 1 Paige R. 220; Balma v. Warbaugh, 38 Barb. 350. See our article 17 Cent. L. J. 121. So, a contract made in one State will be enforced in the courts of another, although the interest is usurious under the laws of the latter. Levy v. Levy, 78 Penn. St. 507; Phila. Loan Co. v. Towner, 13 Conn. 249. And, if the laws of a State provide that interest shall be forfeited, if it exceeds a specified rate, the courts of another State will enforce the law. Arnold v. Potter, 22 Iowa, 94. But forfeiture statutes providing for independent remedies can not be so enforced. Barnes v. Wheeler, 22 Ill. 609; Sherman v. Gassett, 9 Id. 521.

Assignments.—An assignment under the laws of one State can not be given effect in another State to the prejudice of the citizens of the latter State. Paine v. Lester, 44 Conn. 204; Beer v. Hooper, 3 George (Miss.), 246; Oakey v. Bennett, 11 How. 33; Booth v. Clarke, 17 How. 322; Blane v. Drummond, 1 Brock. 62; Felch v. Bugbee, 48 Me. 9; Wood v. Parsons, 27 Mich. 159; Towne v. Smith, 1 Wood & M. 137; Harrison v. Sterry, 5 Cranch. 289; Green v. VanBuskirk, 5 Wall. 307; Osborne v. Adams, 18 Pick. 245; Ingraham v. Geyer, 13 Mass. 146; Blake v. Williams, 6 Pick. 286; Kipcey v. Thompson, 1 Gray, 243; Boyd v. Rockport Steam Mills, 7 Gray, 406; but it is good against citizens of the State where made; Whipple v. Thayer, 16 Pick. 257; Daniels v. Willard, Id. 36; Burlock v. Taylor, Id. 335. *Cf.*, Martin v. Potter, 11 Gray, 37; Newman v. Bailey, 16 Pick. 570; Richardson v. Forepaugh, 7 Gray, 546; Wales v. Alden, 22 Pick. 245; Benedict v. Parmenter, 113 Gray, 88; Means v. Hapgood, 19 Pick. 105; Langworthy v. Little, 12 Cush. 109. But see Means v. Hapgood, 19 Pick. 105.

Insolvency Laws.—It has been pretty generally held that a discharge under the insolvent laws of a State can have no effect upon a debt contracted in another State, or due to a citizen of a foreign State, even in the courts of the former. Beer v. Hooper, 3 George (Miss.) 246; Proctor v. Moore, 1 May, 198. But a discharge is a perfect defense in the courts of any State, where all parties resided in the State where the discharge was obtained. Baker v. Wheaton, 5 Mass. 509. See Watson v. Boume, 10 Mass. 337; Blanchard v. Russell, 13 Mass. 18; May v. Breed, 7 Cush. 15; Boston Type Foundry v. Wallack, 8 Pick. 186. *Contra*, Smith v. Healey, 4 Conn. 49; Atwater v. Townshend, 4 Conn. 49; Easterly v. Goodwin, 35 Conn. 284. Upton v. Hubbard, 28 Conn. 288. See Proctor v. Moore; 1 Mass. 198; In Massachusetts, it was for a long time contended that a discharge under the laws of the State afforded a perfect defense against suits by foreign citizens, as well as its own. Scribner v. Fisher, 2 Gray, 43; Capron v. Johnson, 5 Id. 539. But when the United States Supreme Court, in Baldwin v. Hale, 1 Wall. 223, overruled these decisions the court changed front, and have since placed itself in line. Kelly v. Drury, 9 Allen, 27; Foster v. Waterman, 124 Mass. 592; Producer's Bank v. Farnum, 5 Allen, 10; Fessenden v. Willey, 2 Allen, 67, 70. See Agnew v. Platt, 15 Pick. 417; Isley v. Merriam, 7 Cush. 242; Norton v. Cook, 9 Conn. 318; Anderson v. Wheeler, 25 Conn. 610; Easterly v. Goodwin, 35 Conn. 284. Where a debtor in Ohio was discharged from imprisonment for his debts, it was held that he could not be arrested in another State for the same debt. Pugh v. Bussel, 2 Blackf. 394. But see *contra*, Judd v. Portis, 7 Me. 337.

XUM

Miscellaneous.—Actions for double damage for killing stock can not be maintained outside of the State where they are killed. Bettys v. Milwaukee, etc. R. Co., 37 Wis. 323. In Chicago, etc. R. Co., 8 Am. & Eng. R. Cas., it is held that when the two statutes of a State giving damages for wrongful death, are alike, an action may be brought in either State. But, it has been generally held that an action for wrongful death will not lie outside the State where the death occurred, and whose statutes provided the penalty. Rorer Inter-State Law, 156, citing a number of cases. But in Herrick v. Minneapolis R. Co., 17 Cent. L. J. 81, it was held that an action for a wrongful death will lie in one State where the death occurred, although the common law rule prevailed in the former. — [ED. CENT. L. J.]

WEEKLY DIGEST OF RECENT CASES.

ALABAMA, ... 18, 33, 35, 36
CALIFORNIA, ... 29
ILLINOIS, ... 41
INDIANA, ... 12, 40
IOWA, ... 9
KENTUCKY, . . 1, 3, 6, 10, 11, 31, 38, 39, 44
MASSACHUSETTS, ... 22, 25, 43
MICHIGAN, ... 4, 5, 14, 24
MISSOURI, ... 2
OHIO, ... 30
PENNSYLVANIA, ... 26
TEXAS, ... 13, 16, 19, 20, 21
WISCONSIN, ... 17, 34
FEDERAL CIRCUIT, ... 8, 27, 37
FEDERAL SUPREME, ... 7, 15, 23, 28, 42
ENGLISH, ... 32, 45

1. APPEAL—EFFECT OF SATISFACTION.
The voluntary satisfaction of a judgment by the defendant does not bar the plaintiff's right to prosecute an appeal therefrom. *Wells v. Weaver*, Ky. Ct. App. Jan. 9, 1884.

2. ASSIGNMENT—DAMAGES FOR KILLING STOCK NOT ASSIGNABLE.
A right to sue a railroad for killing stock is not assignable. *Snyder v. Wabash, etc. R. Co.*, S. C. Mo., Feb. 18, 1884.

3. ASSIGNMENT OF PART OF DEBT, BINDING ON DEBTOR.
A creditor may, by writing or by parol, assign a part of the debt so as to enable the assignee to recover it by force of that assignment, and independent of the debtor's consent. *Hart v. Dizon*, Ky. Ct. App. Oct. 17, 1883.

4. ASSIGNMENT—WHAT IS ASSIGNABLE.
A right to sue for damages for fraud or deceit is not assignable, but it is the reverse where the damages are caused by a mere breach of warranty. *Felt v. Reynolds*, S. C. Mich. 379; 18 N. W. Rep. 378.

5. ASSIGNMENT—WHAT OPERATES AS.
The mere conveyance of land by one who has a right of action against his grantor, for breach of the covenant against incumbrances, does not operate as an assignment of the right of action to the grantee; such an assignment can be made only by express words. *Davenport v. Davenport*, S. C. Mich., Feb. 6, 1884; 18 N. W. Rep. 371.

6. BANKRUPTCY—DISCHARGE.
The discharge in bankruptcy of a member of one firm on the petition of the firm, does not release him from liability on debts due by him as a member of another firm. *Fisher v. Perkins*, Ky. Ct. App. Jan. 11, 1884.

7. CHATTEL MORTGAGE—WHAT IS.
An agreement to furnish materials to a railroad company, with the reservation of a lien, does not involve a chattel mortgage within the meaning of the recording acts. *Chicago, etc. R. Co. v. Union R. M. Co.*, U. S. S. C. Jan. 7, 1884; 3 S. C. Rep. 594.

8. COMMON CARRIER—LIABILITY FOR GOODS DESTROYED BY FIRE ON WHARF.
Goods were delivered to the defendant, a steam-boat company, for transportation. The bills of lading did not designate any particular vessel. The goods were burned on the wharf by a fire not occurring through any neglect of the defendant. *Held* that, even though the goods were negligently delayed by the defendant, the delay was not the proximate cause of the loss. *Scott v. Baltimore, etc. R. Co.*; *Odell v. Same*; *Purcell v. Same*; U. S. C. C., D. Md., Jan. 15, 1884; 19 Fed. Rep. 56.

9. CONSTITUTIONAL LAW—ASSESSMENTS—NOTICE TO OWNERS—ORDINANCES.
A statute allowing assessments for public improvements without due notice to the property owner is unconstitutional; but it does not follow that a valid assessment may not be made in pursuance of it, if due notice and due opportunity to be heard are provided by local ordinances. *Gatch v. Des Moines*, S. C. Iowa, Jan. 31, 1884; 18 N. W. Rep. 310.

10. CONVEYANCE—CONSTRUCTION.
Where a father conveys lands to his daughter and her children forever, she does not take an estate for life with remainder to the children, but she with the children, holds the land as joint tenants, and it is immaterial for this purpose that the names of the children were not inserted in the deed. *Bullock v. Caldwell*, Ky. Ct. App. Jan. 22, 1884; 5 Ky. L. Rep. 576.

11. CONVEYANCE — DELIVERY — RECORDING — ACCEPTANCE.
Acceptance of a deed by the grantee is essential to make it valid. The mere fact that the grantor had the deed recorded raises no presumption of acceptance on the part of the grantee. *Jefferson, etc. Asso'n v. Heet*, Ky. Ct. App. Dec. 20, 1883; 5 Ky. L. Rep. 539.

12. CRIMINAL EVIDENCE—PRESUMPTION THAT BEER IS INTOXICATING.
When beer is called for at a place where intoxicating liquors are sold, it is to be presumed that malted and fermented beer is wanted, unless some other kind is mentioned, and when a witness testifies to the sale or giving away of beer under circumstances which make the sale or giving away of any intoxicating liquor unlawful, the *prima facie* inference is that the beer was of that malted and fermented quality declared by the statute to be intoxicating. *Myers v. State*, S. C. Ind. Feb., 1884.

13. CRIMINAL EVIDENCE—REPUTATION—KEEPING DISORDERLY HOUSE.
That a house is kept for purposes of prostitution may be proved by reputation, but the fact as to

who is the keeper thereof can not be so proved. S. C. Tex. Jan. 19, 1884; 3 Tex. L. Rev. 72.

14. CRIMINAL LAW—SALE OF LIQUORS—LIABILITY FOR ACTS OF AGENT.
The law directing saloons to be closed on Sundays, requires the proprietor to see to it at his peril that they are not opened by others in his employ, that no business is carried on therein which would require the doors to be opened or persons to enter on that day. *People v. Blake*, S. C. Mich. Feb. 6, 1884; 16 Chic. L. N. 192.

15. CUSTOMS—RIGHT OF APPEAL—PROCESS OF LAW.
The denial by statute of the right to bring an action for the recovery of duties paid under an excessive valuation does not deprive the importer of his property without due process of law. *Hilton v. Merritt*, U. S. S. C. Jan. 14, 1884; 3 S. C. Rep. 548.

16. DIVORCE—GROUND FOR—FALSE ACCUSATION.
False accusations of adultery are cruelty of the most base and aggravated character, and ground for a divorce. *Jones v. Jones*, S. C. Tex.; 2 Tex. L. Rep. 577.

17. EQUITY—INJUNCTION—WHEN GRANTED.
Where the proprietor of a water-power leases the use of a specific quantity of water, and the lessee persistently uses water in excess of that amount, and threatens to continue in so doing, and where the extent of such use is contingent, and its value difficult of ascertainment, and of doubtful estimation, such proprietor may successfully invoke the aid of equitable intervention to prevent the lessee from using such excess, without alleging or proving that such is essential to the operator of other mills or is diverted therefrom. *Lawson v. Menasha, etc. Co.*, S. C. Wis. Jan. 29, 1884; 6 Wis. L.N. No. 132.

18. EVIDENCE—ADMISSION—PARTNERSHIP.
The failure to reply to a letter in which the sendee is mentioned as a partner of another, the letter being sent with reference to an account, operates as an implied admission of the alleged partnership. *Humes v. O'Brien*, S. C. Ala. December Term, 1883.

19. EVIDENCE—COMPETENCY OF HUSBAND AND WIFE AS WITNESSES.
In a prosecution of a wife's paramour for adultery, the husband is a competent witness against him. But in a prosecution of a husband for incest, his wife can not testify against him. *Alonzo v. State*, Tex. Ct. App. Feb. 6, 1884; 3 Tex. L. Rev. 102.

20. EVIDENCE—CRIMINAL—RECENT POSSESSION OF STOLEN PROPERTY—ONUS.
If the jury are in reasonable doubt about the falsity of the explanation given by one in whose possession recently stolen property is found, he is entitled to an acquittal. *Taylor v. State*, Tex. Ct. App. Feb. 6, 1884.

21. EVIDENCE—IMPEACHMENT OF WITNESS—REPUTATION.
When the credit of a witness, who has deposed in the case, has been impeached by proof that he had made a statement contrary to that he had testified on the trial, it is competent to admit evidence of his general good character for truth and veracity. *Dixon v. State*, Ct. App. Tex. 2 Tex. L. Rep. 619.

22. EVIDENCE OF EMOTIONS OF PAIN.
In an action for damages for assault it is not error to refuse to allow a witness to be asked whether in his presence the plaintiff "ever evinced any emotions of pain or otherwise." *Leonard v. Field*, S. J. C. Mass. 7 Mass. L. Rep. Feb. 21, 1884.

23. EVIDENCE—PRIVILEGED COMMUNICATION.
A communication made to a State's attorney, in Illinois, his duty being to "commence and prosecute" all criminal prosecutions, by a person who inquires of the attorney whether the facts communicated, make out a case of larceny for a criminal prosecution, is an absolutely privileged communication, and can not, in a suit against such person to recover damages for speaking words charging larceny, be testified to by the State's attorney, even though there be evidence of the speaking of the same words to other persons than such attorney. *Vogel v. Gruaz*, U. S. S. C. Feb. 4, 1884; 16 Chic. L. N. 191.

24. INDICTMENT—SUFFICIENCY.
A complaint which charges the defendant with having "sold and delivered spirituous liquors," without alleging any sale to a particular person, or identifying any act as illegal, is void for uncertainty. *People v. Minnock*, S. C. Mich. Feb. 6, 1884; 18 N. W. Rep. 390.

25. INSURANCE—CHANGE OF TITLE—CHANGES OF INTERESTS BETWEEN PARTNERS.
An insurance policy, which was issued on certain partnership property, was conditioned to become void "if the said property shall be sold" without the written assent of the company. Before the expiration of the policy one partner bought out his copartner and give him a mortgage back. *Held*, that the condition of the policy was not thereby broken. Changes between the partners in the relative amounts or in the nature of their respective interests do not fall within the fair meaning of the words used. *Powers v. Guardian, F., etc. Ins. Co.* S. J. C Mass. 17 Rep. 245.

56. INSURANCE—LIFE—ASSIGNMENT.
One having no interest in the life assured cannot, for the purpose of speculation only, acquire by assignment or otherwise such title to the policy as the law will enforce. *Gilbert v. Moose*, S. C. Pa. 41 Leg. Int. 75.

27. INSURANCE—LIFE—PROOF OF DEATH.
Absence of a person alone does not raise a presumption of his death: but such absence, in connection with surrounding circumstances, such as the failure by his family and friends to learn of his whereabouts, his character and business relations, together with the fact that he was last known to be seen near the place where a murder is supposed to have been committed, and the reputation in his family and with his friends that he is dead, creates a very strong presumption of death, the law being satisfied with less than certainty, yet requiring a preponderance of proof. On the other hand, evidence to overcome the presumption of death, that the party supposed to be dead was in a financial condition which might have induced him to abscond, or that he was a speculator, or visionary, in his business or trades, is all proper evidence to be considered by the jury in establishing the fact. *Sendsendörfer v. Pacific Mut. L. Ins. Co.*, U. S. C. C., W. D. Mo., 19 Fed. Rep., 68.

28. LIEN—WAIVER—EXPRESS RESERVATION—GIVING CREDIT—SECURITY.
1. An express reservation, by written contract, of a lien upon materials furnished a railroad, does not

operate as a waiver of the statutory lien. 2. The statutory lien, which, to be effectual, has to be asserted within a certain time, is not waived by an agreement to give credit beyond that time upon receiving security, unless the security is actually given. *Chicago, etc. R. Co. v. Union R. M. Co.*; *Massachusetts Mut. L. Ins. Co. v. Same*, U. S. S. C., Jan. 7, 1884, 3 S. C. Rep., 594.

29. LIMITATION—BANK—DEPOSIT.
The statute of limitations does not run against a cause of action to recover money deposited in a bank. *Green v. Odd Fellows Bank*, S. C. Cal., Feb. 15, 1884; 1 W. C. Rep., 877.

30. LIMITATIONS—MARRIED WOMEN.
The Married Women's Acts have not repealed the exception in the statute of limitations, in favor of married women, suspending the statute during coverture. *Hurlbut v. Wade*, S. C. Ohio Com., Feb. 19, 1884.

31. LIMITATION—TRUSTS.
The statutes of limitation do not apply to express or continuing trusts which are exclusively cognizable in equity. When the chancellor is asked to enforce such trusts and the existence of the trust is acknowledged, lapse of time is no bar to the action, but if the trust is denied and there has been gross negligence in enforcing the right or long acquiescence in the adverse claim, equity will act on the policy of discouraging antiquated demands and will refuse relief. *Helm v. Rogers*, Ky. Ct. App., Jan. 22, 1884, 5 Ky. L. Rep., 569.

32. NEGLIGENCE—CONTRIBUTORY—CROSSING RAILWAY.
Plaintiff was crossing a railway by a level crossing. A hedge and buildings obstructed the view, so that he could not see along the line to the left until he got on to the railway, but he could then have seen and he did not look. He was injured by a train approaching from the left on the further line. The engine-driver did not whistle, and the gate-keeper at the level crossing gave no warning. *Held*, that the injury was caused solely by plaintiff's own negligence *per se*. *Davey v. London, etc. R. Co.*, Eng. Ct. App., 49 L. T. 739.

33. NEW TRIAL—IMPROPER REMARKS OF COUNSEL—DUTY OF COURT.
When counsel make improper remarks, and upon objection, the counsel says, "Oh, well, I'll take it back," it is not sufficient; the court must instruct the jury specially to disregard them. *Wolffe v. Minnis*, S. C. Ala., Dec. Term, 1883.

34. NOTICE—FAILURE TO INDEX DEED.
A *bona fide* purchaser of land has not constructive notice of a prior deed, filed with the recorder, and copied by him in the records, but not indexed by him. A purchaser need not go beyond the index. *Lombard v. Culbertson*, S. C. Wis., Jan. 29, 1884, 18 N. W. Rep., 399.

35. NOTICE—REPUTATION.
Where the issue in a case is whether the plaintiff had notice of the dissolution of a partnership, it may be shown that it was generally reputed that such dissolution had taken place, to affix him with notice. *Humes v. O'Brien*, S. C. Ala., Dec. Term, 1883.

36. PARDON—WHEN EFFECTUAL—DELIVERY.
A pardon to be effectual must be delivered in the same manner as a conveyance, but a delivery to the warden of the penitentiary, is a delivery to the prisoner, and the pardon can not then be recalled. *Ex parte Richard Powell*, S. C. Ala., 11 Ala. L. J., 408.

37. PATENT LAW — ESTOPPEL — ASSIGNMENT—INJUNCTION.
1. The assignor of a patent is estopped to deny its validity as against his assignee. 2. Such assignee is entitled to a preliminary injunction, in a suit to restrain the infringement thereof, although he has never established the validity of the patent. *Time Tel. Co. v. Carey*, U. S. C. C., S. D. N. Y., Feb., 1884.

38. PLEADING—PETITION—CONCLUSIONS OF LAW.
It is not sufficient in a petition to allege merely that the plaintiffs are "heirs of at law," of the last owner; that is a conclusion of law; the mode of inheritance must be shown. *Berkeley v. Stewart*, Ky. Ct. App. Jan. 29, 1884.

39. PLEADING—SUFFICIENCY OF ANSWER—LIMITATIONS.
It is sufficient in an answer to merely say that "the defendant pleads, and it relies upon the statute of limitations as a bar to the plaintiff's action." *Woodward v. Enders*, Ky. Ct. App. Jan, 22, 1884.

40. PROBATE LAW — SUPPORT OF WIDOW — NOT CHARGE UPON HUSBAND'S ESTATE.
The support of a widow cannot be charged upon her husband's estate. *Hopkins v. Guinn*, S. C. Ind. Feb. 1884.

41. RAILROAD—KILLING STOCK—NEGLIGENCE.
A railroad company which by statute is liable for damages for an injury to live stock on its track, where it has not erected a fence, caused by the agents, engines, or cars of the company, is liable only for injuries from contact; it is not liable for injuries from fright. *Schertz v. Indianapolis, etc. R. Co.*, S. C. Ill., 17 Rep. 238.

42. RES JUDICATA—JUDGMENT IN STATE COURT.
A decree of a State court for the removal of a cloud upon the title of land within the State, rendered against a citizen of another State, who has been cited by publication only, as directed by the local statutes, is no bar to an action by him in the Circuit Court of the United States to recover the land against the plaintiff in the former suit. *Hart v. Sansom*, U. S. S. C., Jan. 21, 1884, 29 Alb. L. J., 152.

43. SLANDER—PRIVILEGED COMMUNICATIONS.
Charges made to one by another that he has committed an indictable offense against him are privileged, though a third person is present. *Billings v. Fairbanks*, S. J. C. Mass., 17 Rep. 247.

44. TAXATION OF WATER COMPANY—COMPELLING PAYMENT OF TAXES.
Water companies, like railroads or turnpikes, being established for the public benefit, its property can not be seized by the sheriff and sold for taxes. If it refuses to pay, it may be compelled by rule or by the appointment of a receiver to operate the property. *Louisville Water Co. v. Hamilton*, Ky. Ct. App., Dec. 20, 1883, 5 Ky. L. Rep., 557.

45. TENANCY IN COMMON—CONTRIBUTION TOWARDS REPAIRS.
A tenant in common is only liable to contribute towards the cost of repairing the common property, incurred by his co-tenant, where such repairs are necessary for the prevention of ruin, and for the preservation of the common property. *Leigh v. Dickison*, Eng. H. Ct., Q. B. Div., 49 L. T., 389.

QUERIES AND ANSWERS.

QUERIES.

19. Has the word "emoluments," as used in connection with fees or salary of an officer, ever been judicially defined? SHY ANN.

20. Is section 6762, Rev. Stat. of Missouri, with reference to what shall be inscribed on a notary's seal merely directory, or is it specific and mandatory? Would you infer from said section that a notary could have nothing else inscribed on his seal except his name, county or city, and State, with the expiration of his term of office? To come to the point, would the words "real estate agent" inscribed thereon effect the legality of his seal? W. W. GRAVES.
Papinville, Mo.

21. A and B each own an undivided half interest in a tract of land. On March 1st, 1855, A gives to C, a warranty deed for "an undivided one-fourth interest" in said land. This deed is filed for recordation on March 1st, 1859. On February 1st, 1856, A gives to C a warranty deed for "an undivided one-half of his interest" in said land. This deed is filed for recordation on February 1st, 1856. On May 1st, 1868, A becomes the owner, by purchase, of B's one-half interest in said land. On February 1st, 1871, C sells "all his interest" in said land to D. What interest does D own? In a suit for partition between D and A, can A introduce parol evidence to show that the deed from A to C, of date Feb. 1st, 1856, was given in the stead of the deed from A to C, of date March 1st, 1855, and that A then supposed the deed of March 1st, 1855, lost. Please cite authorities. X.

QUERIES ANSWERED.

Query 1. [18 Cent. L. J. 40.] What is the meaning of "Kat exochen," as used by Lube in his Equity Pleading (White's ed.), p. 220? Wm. P. S.

Answer No. 1. "Kat exochen," is a Greek word, meaning "by way of distinction," c. f. any Greek Lexicon. W. L. S.
Goshen, Ind.

Answer No 2. "Kat' exochen" mean's by way of, prominence; and the sentence in Lube should read: "These pleas are "kat' exochen" (by way of prominence) called Pleas in Abatement." Lube, with Beames, divides pleas in equity into pleas in abatement, and pleas in bar; and then divides pleas in abatement into pleas to the jurisdiction, pleas to the person, and pleas of want of proper parties, pendency of another action, etc. It is in this last division in which the Greek words occur. This division has not usually been followed. *see* Mitf. Eq. P. 221; Cooper Eq. Pl. 236; Story Eq. Pl. §705; 1 Daniell Ch. Pl. & Pr. 626 (5th Am, Ed.)

E. F. P.
Waterbury, Vt.

Query 4. [18 Cent. L. J. 59.] A and B are joint tenants in fee simple of a parcel of land. They join in a conveyance to C, and, as consideration, take C's promissory note to them jointly. A dies, and B, by suit, recovers the note in full. Can A's executor recover of B, at common law, half of the amount so recovered by him? If not, can he in equity? Let him who answers give reasons rather than authorities merely. B.

Answer. It is clear that at law A's executor can not recover from B, since the note is by its terms joint; that is, the legal title to the note and the debt represented by it survive, and the law will not, even in the equitable action for money had and received, allow any one to recover against a loss caused by strict operation of law. In equity the reasons are almost equally conclusive. If the debt had been the mere purchase money debt created by operation of law at the time of the sale, equity might well allow relief against the survivorship, and so if the land had been held by any title not allowing of survivorship, as tenancy in common. But as the parties have chosen to take a security of exactly the same legal nature as their title to the land, no reason exists for granting any such relief. Besides, a partnership is the only exceptional case in which equity requires an accounting by joint tenants at law. Equity does not regard joint tenancy as a hardship grounding relief in any case, and in partnership the accounting is allowed only because the partners are in substance trustees for each other of the surplus funds of the firm, not required for the payment of debts.
Cincinnati, Ohio. G. H., Jr.

Query 14. [18 Cent. L. J. 159.] A suit is brought before a justice to obtain the benefits of section 2353 Revised Statutes of Missouri, 1879, and judgment is rendered against the purchaser of certain personal property (household goods) for the purchase price thereof and special execution is issued against such property, and the same is sold by the constable against the objections of the judgment debtor, who claims exemption therein. In a suit against the constable, is the finding of the justice that said judgment is for the "purchase price" of said articles, conclusive against the judgment debtor; or is such recital in the justice's docket and in the execution mere surplusage? NEOSHO.
St. Louis, Mo.

Answer. It would seem that a kindred question was decided in Reed v. Umbarger, 11 Kas. 206. The first paragraph of the syllabus in said case reads: "In a suit before a justice of the peace, a finding that the demand is for laborer's wages is, when the issue is tendered by the bill of particulars as conclusive as a finding of the amount due."

KANSAS.
Osage Mission, Kan.

RECENT LEGAL LITERATURE.

MYER'S FEDERAL DECISIONS. Cases Argued and Determined in the Supreme Court and District Courts of the United States; comprising the opinions of those courts from the time of their organization to the present date, together with extracts from the opinions of the Court of Claims and the Attorneys-General, and the opinions of general importance of the territorial courts. Arranged by William G. Myer. Vol. 2. St. Louis, 1883: Gilbert Book Co.

The publisher of this series of reports is certainly worthy of commendation for enterprise in offering the second volume, so soon after the publication of the first. Doubtless the length of time to be occupied by the issuance of the entire series depends upon the reception the initiatory volumes

are given, and the support thereby apparently promised to the enterprise as an entirety. If the whole work is accomplished with the same satisfaction which these two volumes have given, there certainly ought to be no doubt in the minds of the publishers, as to the success of the project. It is true that the bar is conservative and it requires time to impress the legal fraternity with the merit of progressive plans. This with the crying down which it is receiving and will continue to receive at the hands of those publishers with whose reports this series apparently competes, renders the adoption of the idea difficult, and will compel the publishers to make efforts of more than ordinary character. Still, we think that in the end, the profession will begin to perceive the merit of the work, and will conclude that it is a necessary incident to every well cared for library. This volume completes the subject of Appeals and Writs of Error, which is divided into twenty-nine chapters, and treats fully of Arbitration and Awards, Assignment and Attorneys. At the end of this volume is the table of cases to volumes I and II, and the index to the same volumes, which is very well done by one who seems to be a novice in legal literary work. This brings the series down to the letter B, although the descent is not very great. There are some things which we have observed since reviewing the first volume, which we thought detracted from its value, but they are of minor importance, and there must necessarily be a diversity of opinion as to the *minutiae* of the plan to be pursued in preparing a series of this character. Desiring to convince ourselves of the judiciousness with which cases have been reduced to a digested form, we have examined a number of them, and we are of the firm opinion that the whole meat of every case digested, is contained in the digest. To be sure, we had already the assurance of distinguished authors to that effect, but all doubts in our mind have been dispelled by this personal scrutiny of a list of cases selected at random. This series can therefore be well substituted for the original reports, and they are certainly in a so much more available form. We have no reason to alter the views expressed by us, (ante. 59,) and we are glad that we have one more volume in our sanctum, as a support.

NOTES.

——Hon. Wm. H. Hunt, minister to Russia, formerly Secretary of the Navy and Judge of the United States Court of Claims, died last week. He was a man of more than average ability, and his loss will be mourned by man

——At a recent bar examination in Ohio, only twelve of twenty-four applicants were admitted. Rigid examinations are the only things which will keep the "incompetents" where they belong.

——Judge Treat of the United States District Court, was given quite a *treat* on Monday last, it being the twenty-seventy anniversary of his assumption of the duties of the Federal bench. It was also a curious coincidence that it was the last day in which the Judge was to sit in the old court house. Judge Lindley and Col. Dyer made speeches, and Judge Treat made an appropriate reply, in which he eulogized all those with whom he had been associated. He paid a high compliment to Judge Krekel particularly.

——We learn the following from the *New York Tribune* of the 2d inst., just as we go to press: "John Lowell, Judge of the United States Circuit Court for the First Circuit, has forwarded his resignation, to take effect next May. He has held the office of Judge in the Federal Courts for upwards of nineteen years, having been appointed Judge of the District court (by President Lincoln) in March, 1865, and to his present position as Circuit Judge in December, 1878.

——A rather important question arose in a recent case in the New York city court. The suit was one for illegal arrest. The defendant had arrested the plaintiff. A striking cigar maker doing picket duty, for intimidating another maker from going to work. Chief Justice McAdam in charging the jury laid down the law to be that "any orderly body of men have the legal right to meet and discuss any question concerning their social or pecuniary welfare, and take any action in respect thereto which they deem beneficial, so long as it does not involve or tend to create a breach of the public peace, that the plaintiff had the legal right to decline to work for his employer, unless the latter consented to pay the wages the former demanded; that he had the right to invite others to join him in the course he had determined to pursue, to accost workmen in the street or elsewhere and invite them to follow his example or join the union, and if in the exercise of these rights he was wrongfully assaulted, and maltreated by the defendant, he is entitled to a verdict, in such sum as will compensate for the wrongs done. But if he undertook to enforce his rights in an illegal manner used violence or threatened workmen who declined to think and act as he did, the defendant, as a police officer had the right to protect the workmen so threatened, and had the power to prevent any threatened breach of the peace, and to use whatever force was necessary to accomplish this object. But if the officer used unnecessary violence, he is liable therefor as an abuse of authority."

——In a recent article of ours (ante 48) we touched upon the question of the constitutionality of the Sunday laws, and therein showed that two courts of last resort had upheld them. Now comes John Geo. Hertwig Esq. of Washington D. C. (whose name we are pained to say had never attracted our notice) and in a little pamplet (the receipt of which we most gratefully acknowledge) makes what the author is pleased to have us understand is a conclusive argument against their constitutionality. We do not wish to flatter the author but his pamphlet may prove useful somewhere. We are glad to give him a little free advertising, but we cannot admit that his argument is conclusive, nor do we think that about every court in this country which has passed upon the question, will make great haste in overruling their decisions. It is needless to say that as a special favor to our subscribers, he will supply all who feel inclined to renew the question, with this pamphlet at the low price of one dime. He might be prevailed upon to furnish three for a quarter. An "irresistible" argument upon "woman suffrage" may be obtained upon the same liberal terms.